

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
)
Plaintiff,)
)
)
v.) Criminal Action No.
) 05-00344-01/02-CR-W-ODS
GARY EYE,)
and)
STEVEN SANDSTROM,)
)
Defendants.)

**MEMORANDUM OF MATTERS DISCUSSED AND
ACTION TAKEN AT PRETRIAL CONFERENCE**

Pursuant to the order of the Court en banc of the United States District Court for the Western District of Missouri, a pretrial conference was held in the above-entitled cause before me on April 7, 2008. Defendant Gary Eye appeared in person and with appointed counsel John Osgood and Lance Sandage. Defendant Steven Sandstrom appeared in person and with appointed counsel Charles Rogers and John Gromowsky. The United States of America appeared by Assistant United States Attorneys David Ketchmark, Mike Green, and Eric Gibson.

I. BACKGROUND

On September 29, 2005, an indictment was returned charging both defendants with two counts of interference with federally protected activities, in violation of 18 U.S.C. § 245(b)(2)(B); one count of using or discharging a firearm during a crime of violence, in violation of 18 U.S.C. § 924(c)(1)(A)(iii); two counts of using or discharging a firearm during a crime of violence causing murder, in violation of 18 U.S.C. §§ 924(c)(1)(A)(iii) and (j)(1); one count of tampering with a witness, in violation of 18

U.S.C. §§ 1512(a)(1)(C) and (a)(3)(A); one count of obstruction of justice, in violation of 18 U.S.C. § 1519; and one count of using fire to commit a felony, in violation of 18 U.S.C. § 844(h)(1). In addition, defendant Steven Sandstrom is charged with one count of threatening to retaliate against a federal witness, in violation of 18 U.S.C. § 1513(b)(2). A superseding indictment was returned on May 17, 2006, adding notice of special findings as to both defendants.

The following matters were discussed and action taken during the pretrial conference:

II. TRIAL COUNSEL

Mr. Ketchmark announced that he, Mike Green, and Eric Gibson will be the trial counsel for the government. The case agents to be seated at counsel table are Special Agents Arch Gothard and Heath Janke, Federal Bureau of Investigation. The defendants object to the government having two case agents in the courtroom. Defendant Eye has raised issues about Janke's credibility and believes that Janke's presence in the courtroom will affect defendant's cross examination of Janke. The government has listed Special Agent Gothard on its witness list; however, it does not intend to call Special Agent Janke as a witness. Defendant Eye has listed Special Agent Janke as a possible defense witness.

Mr. Osgood announced that he and Lance Sandage will be the trial counsel for defendant Gary Eye.

Mr. Rogers announced that he and John Gromowsky will be the trial counsel for defendant Steven Sandstrom.

III. OUTSTANDING MOTIONS

The following motions are pending for ruling by the district judge:

1. Motion to dismiss due to violation of 5th and 6th amendment right to counsel, filed by Gary Eye on October 24, 2007 (document number 246); See also supplemental motion, doc. #247; response, doc. #249; transcript of hearing, doc. #285; Report and Recommendation, doc. #347. Objections to Report and Recommendation were due April 1, 2008. No objections have been filed.
2. Motion to suppress due to illegal use of Rule 17(c), filed by Gary Eye on November 26, 2007 (document number 265); See also response, doc. #282; transcript of hearing, doc. # 286; Report and Recommendation, doc. #359. Objections to Report and Recommendation are due April 14, 2008.
3. Motion in limine to exclude testimony of Eric Eymard and Justin Buchanan, filed by Gary Eye on January 22, 2008 (document number 303). One third of motion referred for R&R. See also response, doc. #282; transcript of hearing, doc. #286; Report and Recommendation, doc. #359. Objections to Report and Recommendation are due April 14, 2008.
4. Motion for reconsideration of Order granting [276] motion in limine as to Gary Eye (1); granting in part and denying in part [227] motion in limine as to Gary Eye (1); granting [261] motion in limine as to Gary Eye (1); granting in part and denying in part [262] motion in limine as to Gary Eye (1); granting [263] motion in limine as to Gary Eye (1); denying [271] motion in limine as to Gary Eye (1); denying [275] motion in limine as to Gary Eye (1); granting [268] motion for order as to Steven Sandstrom (2); granting [269] motion for order as to Steven Sandstrom (2); granting [270] motion in

limine as to Steven Sandstrom (2) (doc. #345), filed by the United States on April 3, 2008 (document number 362).

5. Motion to have recorded conversations transcribed, filed by Steven Sandstrom on April 7, 2008 (document number 367). Defense counsel indicated that he does not currently have an estimate of how much this will cost or how long it will take to have these telephone calls (recorded while defendants were incarcerated in the Jackson County Jail) transcribed; however, Mr. Gromowsky stated that he would get this information and pass it on to the court.

6. Ex parte motion for mitigation budget, filed by Steven Sandstrom on May 9, 2007 (document number 224).

I provided this list to counsel on April 7, 2008, with directions to notify the court if there are any motions pending which are not on this list. Today date, no one has indicated that there are additional motions pending.

Additionally, document number 356 remains pending, a motion for transcripts. The transcripts that already exist are being copied and the hearings which were not transcribed have been sent to the transcriptionist. Copies of all of the transcripts requested will be sent to defense counsel by April 15, 2008. Therefore, that motion, although pending, is being resolved and can be termed by early next week.

IV. TRIAL WITNESSES

Mr. Ketchmark announced that the government intends to call 40 to 50 witnesses with stipulations during the trial. He stated that the government may be able to reduce that number to 35 to 40.

Mr. Osgood announced that defendant Gary Eye currently intends to call 23 witnesses during the trial; however, once the trial plans are revised (by the end of this week), he may reduce that number to 15 to 20 witnesses. The defendant may testify.

Mr. Rogers announced that defendant Steven Sandstrom intends to call 9 to 10 witnesses during the trial. The defendant may testify.

V. TRIAL EXHIBITS

Mr. Ketchmark announced that the government will offer approximately 100 to 110 exhibits (some with sub-categories) in evidence during the trial. The government will file its proposed exhibit list by the end of the week.

Mr. Osgood announced that defendant Gary Eye will offer approximately 5 exhibits in evidence during the trial.

Mr. Rogers announced that defendant Steven Sandstrom currently anticipates offering no exhibits other than what is on the government's exhibit list but may offer 1 to 2 exhibits in evidence during the trial.

VI. DEFENSES

Mr. Osgood announced that defendant Gary Eye will rely on the defense of general denial.

Mr. Rogers announced that defendant Steven Sandstrom will rely on the defense of general denial.

VII. POSSIBLE DISPOSITION

Mr. Osgood stated this case is definitely for trial. Mr. Rogers stated this case is definitely for trial.

VIII. STIPULATIONS

Stipulations are likely as to chain of custody.

IX. TRIAL TIME

Counsel were in agreement that the guilt phase of this case will take approximately 7 to 11 days to try (4-6 days for the government's case, 2-3 days for Gary Eye's case, and 1-2 days for Steven Sandstrom's case). In addition, counsel believe voir dire will likely take 2-4 days.

X. EXHIBIT LIST, VOIR DIRE AND INSTRUCTIONS

Stipulations and Orders were filed January 11, 2006 (doc. #40) and July 31, 2006 (doc. #163).

The United States will file its proposed exhibit list by the end of this week. Defendant Gary Eye filed his proposed exhibit list on December 2, 2007 (doc. #280). Defendant Steven Sandstrom has not filed a proposed exhibit list. Mr. Rogers stated that currently defendant Sandstrom does not intend to offer any exhibits; however, if he decides to list exhibits, he will timely file a proposed exhibit list.

Defendant Sandstrom filed his proposed witness list on April 8, 2008 (doc. #372). No proposed witness list has been filed by Eye or the government. Counsel were requested to file proposed witness lists by the end of the week. Although there are proposed witness lists attached to proposed jury questionnaires, I instructed counsel to file these lists as proposed witness lists so that the court will have ready access to them by searching the docket sheet entries.

The parties were instructed to file any proposed voir dire (in addition to the general voir dire of the jury questionnaires) by the end of this week.

The government was directed to file its proposed jury instructions by April 11, 2008. Defendants were directed to file their proposed jury instructions by April 15, 2008.

XI. UNUSUAL QUESTIONS OF LAW

The following motions in limine have been filed: document numbers 227, 261, 262, 263, 270, 271, 275, and 276. All of these motions in limine were ruled by document number 345.

One motion in limine remains pending, document number 303 (see above, section III.). In addition, there is a pending motion to reconsider document number 345, the order entered ruling on eight motions in limine.

No additional motions in limine are anticipated. There are no unusual questions of law.

XII. TRIAL SETTING

All counsel and the defendants were informed that this case has a special setting commencing April 22, 2008.

/s/ Robert E. Larsen
ROBERT E. LARSEN
U. S. Magistrate Judge

Kansas City, Missouri
April 9, 2008

cc: The Honorable Ortrie Smith
Mr. David Ketchmark
Mr. Mike Green
Mr. Eric Gibson
Mr. John Osgood
Mr. Lance Sandage
Mr. Charles Rogers
Mr. John Gromowsky
Mr. Jeff Burkholder